

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 57 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Errico et al. (5,776,135).

Errico et al. disclose an insert element comprising: an articulating body portion (120, 154) including screw head receiving means (e.g., 130) for receiving a screw head (106) and rod receiving means (162) for receiving a rod (172) therein, said rod receiving means being offset from said screw head receiving means; and locking means (158) for locking a rod within said body portion wherein said locking means is a cam lock including threads (168a, 168b) on an exterior surface of said cam lock for maintaining said cam lock in said body portion. See, e.g., Figs 1, 2, 5 and 6.

Claim 57 is rejected under 35 U.S.C. 102(b) as being anticipated by Finn et al. (5,474,551).

Finn et al. disclose an insert element comprising: an adjustable body portion including screw head receiving means (50) for receiving a screw head (24) and rod receiving means (30) for receiving a rod (12) therein, said rod receiving means being offset from said screw head receiving means; and locking means (80) for locking a rod

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within said body portion wherein said locking means is a cam lock including threads on an exterior surface of said cam lock for maintaining said cam lock in said body portion (see, e.g., Fig. 4). It is noted that the cam lock including threads on an exterior surface constitutes a camming mechanism since it is capable of converting a rotating motion into a reciprocating motion. See, e.g., "cam." The Columbia Electronic Encyclopedia, Sixth Edition. Columbia University Press., 2003. Answers.com 27 Jun. 2009. <http://www.answers.com/topic/cam>.

Response to Arguments

Applicant's arguments filed 18 September 2009 have been fully considered but they are not persuasive.

Examiner maintains the grounds of rejection for the reasons set forth above. In response to Applicant's arguments, it is further noted that the rotation of the screw 158 in Errico causes the screw to move linearly and the direction of translation corresponds to the direction of rotation. The screw can be turned in both directions and results in linear motion in both directions. Thus feature 158 constitutes a camming mechanism since it is capable of converting a rotating motion into a reciprocating motion, as set forth above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733